

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

---

JUAN QUINONEZ-GARCIA, }  
Petitioner, } Cr. No. 06-2655GT  
v. } Cv. No. 07-1336GT  
UNITED STATES OF AMERICA } ORDER  
Respondent. }

---

On July 24, 2007, Petitioner, Juan Quinonez-Garcia ("Mr. Quinonez"), filed a Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C. § 2255. Mr. Quinonez argues that his counsel was ineffective for a variety of reasons. The Court has fully considered this matter, including a review of Mr. Quinonez' brief filed, the authorities cited therein and the arguments presented. For the reasons stated below, Mr. Quinonez' Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

First, Mr. Quinonez pled guilty, pursuant to a written plea agreement, to three counts of illegal entry by an alien, in violation of 8 U.S.C. § 1325. In the written plea agreement, Mr. Quinonez explicitly waived his right to appeal and/or collaterally attack his conviction or sentence.

1 The Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See,*  
 2 United States v. Baramdyka, 95 F.3d 840, 843 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997).  
 3 Since Mr. Quinonez expressly waived his statutory right to appeal or collaterally attack his  
 4 sentence in his plea agreement, Mr. Quinonez is now precluded from challenging that sentence  
 5 pursuant to 28 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993)  
 6 (holding that a knowing and voluntary waiver of a statutory right is enforceable).

7 Moreover, even if Mr. Quinonez had not expressly waived his right to appeal or collaterally  
 8 attack his sentence, his petition would still fail. In essence, Mr. Quinonez argues that his counsel  
 9 was ineffective for a variety of reasons. In order to prevail on a claim of ineffective assistance of  
 10 counsel, a petitioner must show that counsel's performance was deficient and that this deficient  
 11 performance prejudiced the petitioner. Strickland v. Washington 466 U.S. 668, 687 (1984). The  
 12 petitioner must show that but for counsel's errors he would not have pled guilty and would have  
 13 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

14 Mr. Quinonez first argues that his guilty plea violates the Double Jeopardy clause. Mr.  
 15 Quinonez claims all three convictions stem from the same date. However, in the plea agreement  
 16 and the plea colloquy, Mr. Quinonez specifically pled guilty to entering on three separate dates.  
 17 Hence, his plea does not violate the Double Jeopardy Clause and his counsel was not ineffective  
 18 for advising him to plead guilty.

19 Next, Mr. Quinonez argues that he was entitled to a four level reduction under the fast track  
 20 program. Under the fast track program the court **may** grant up to a four level reduction for fast  
 21 track. It is up to the Government to request the reduction and the Court to determine the number  
 22 of levels to deduct. Again, Mr. Quinonez' counsel was not ineffective because Mr. Quinonez  
 23 received this district's standard two level reduction for fast track.

24 Third, Mr. Quinonez argues that his counsel was ineffective for not presenting or arguing any  
 25 motions on his behalf. Under the terms of the plea agreement, Mr. Quinonez' counsel could not  
 26 raise any motions.

27 Finally, Mr. Quinonez argues that he was coerced into pleading guilty and did not understand  
 28 the consequences to his pleading guilty. However, during the plea colloquy, Mr. Quinonez was

1 specifically asked if he understood the terms of the plea agreement and if he was pleading guilty  
2 knowingly and voluntarily. Mr. Quinonez stated in the affirmative. Hence, Mr. Quinonez can not  
3 now argue he was coerced and did not understand what he was doing. Accordingly,

4 **IT IS ORDERED** that Mr. Quinonez' Motion to Vacate, Set Aside or Correct Sentence is  
5 **DENIED**.

6 **IT IS SO ORDERED.**

7  
8 *Oct. 9, 2007*  
9 date

10   
11 GORDON THOMPSON, JR.  
12 United States District Judge

13 cc: AUSA Bruce Castetter Petitioner

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28